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No. 03-973

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

PUFFER-HEFTY SCHOOL DISTRICT NO. 69 AND BRUCE WEEKS,

Petitioners,

v.

DUPAGE REGIONAL BOARD OF SCHOOL TRUSTEES OF DUPAGE COUNTY, ILLINOIS, AND ITS MEMBERS, R. DONALD MAHLKE, LAURA POLLASTRINI, JOSEPH PATRICELLI, GLORIA K. SCIGOUSKY, MARTHA ROGERS, DEBRA OLSON, GWENDOLYN L. BATES, AND MERARDO J. DESIMIONE, REGIONAL SUPERINTENDENT OF THE SCHOOLS OF DUPAGE COUNTY, AND EX-OFFICIO SECRETARY OF THE REGIONAL BOARD OF SCHOOL TRUSTEES FOR DUPAGE COUNTY, THE COMMITTEE OF TEN, AND ITS MEMBERS, FRANCES D. HOLBROOK, DAVID J. SCHILLING, DUSHAN BUDIMIR, DEBRA LYNN WESLEY, WILLIAM FEHRMANN, EUNICE GIAMMONA, LORI BUDIMIR, MICHAEL WESLEY, HUGO MONTENEGRO, THERESA BREZINSKI, AND SCHOOL DISTRICT NO. 58,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

BRIEF IN OPPOSITION FOR RESPONDENTS THE COMMITTEE OF TEN, AND ITS MEMBERS

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STATEMENT OF THE CASE

On July 25, 1997, Respondents, the Committee of Ten, filed a petition seeking the dissolution of Puffer-Hefty School District No. 69 (hereinafter "Puffer-Hefty") and its annexation to Downers Grove School District No. 58. This petition was filed on behalf of 1,169 signatories, pursuant to Sections 7-2a(b) of the School Code, 105 Ill. Comp. Stat. 5/7-2a(b), because Puffer-Hefty has fewer than 5,000 residents. As of the Petition's filing on July 25, 1997, Puffer-Hefty had 1,947 registered voters. The parties stipulated that the petition contained 1,101 valid signatures at the time of its filing, 127 signatures beyond the 974 necessary to effectuate dissolution. *Puffer-Hefty Sch. Dist. No. 69 v. Regional Bd. of Sch. Trustees*, 789 N.E.2d 800, 805 (Ill. App. Ct. 2003).

REASONS FOR DENYING THE PETITION

The dual questions presented by the Petition ask whether 105 Ill. Comp. Stat. 5/7-2a(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Pet. at i. Petitioners argue that the Second District Appellate Court of Illinois improperly used the rational basis test when it concluded that Section 7-2a(b) does not violate the Equal Protection clause. Petitioners further argue that Section 7-2a(b) cannot survive scrutiny under either a strict scrutiny analysis or the rational basis test.

Petitioners assert that voting is a fundamental right, and that Section 7-2a(b) infringes upon that right. Given these assumptions, Petitioners argue that Section 7-2a(b) must be subject to a strict scrutiny analysis. Petitioners do not have

standing to raise the Equal Protection claims contained in the Petition for Writ. Further, Petitioners misconstrue this Court's prior rulings regarding voting rights to support their faulty assumptions that school boundary changes must be voted upon, and that a statutory framework allowing for a school boundary change absent an election infringes upon a fundamental right to vote. The Illinois Appellate Court correctly held that no constitutional right exists that requires an election to effectuate a school boundary change. In the absence of a fundamental right or discrimination against a suspect class, the Illinois Appellate Court properly applied the rational basis test and concluded that Section 7-2a(b) does not violate the Equal Protection Clause. The Illinois Appellate Court's decision was proper in all respects, and Respondents, The Committee of Ten, respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

If this Honorable Court denies the Petition for Writ of Certiorari before June 30, 2004, the effective date of the change in boundaries shall be July 1, 2004. 105 Ill. Comp. Stat. 5/7-9. The Committee of Ten respectfully requests this Honorable Court to expedite its ruling to allow Downers Grove School District 58 the greatest amount of time to efficiently create as smooth a transition as possible before the boundary change becomes effective on July 1, 2004.

I.

PLAINTIFFS DO NOT HAVE STANDING TO RAISE THE EQUAL PROTECTION CLAIMS PRESENTED BY THE PETITION

The Plaintiffs-Petitioners, Puffer-Hefty and Bruce Weeks, ask this Court to consider whether 105 Ill. Comp. Stat. 5/7-2a(b) violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Neither the School District nor Weeks has standing to raise this constitutional issue. As a public school district, Puffer-Hefty is not a "person" within the meaning of the equal protection provisions of the Illinois or United States Constitutions. *Village of Schaumburg v. Doyle*, 661 N.E.2d 496 (Ill. App. Ct. 1996), *appeal denied*, 667 N.E.2d 1063.

Bruce Weeks does not have standing for several reasons. First, the Petition for Writ attempts to allege an injury to residents and electors of Downers Grove School District 58. Petitioner cannot represent a class to which he does not belong. *Rosario v. Rockefeller*, 93 U.S. 1245, 1250 (1973). Because Weeks is a resident of Puffer-Hefty and not a resident of District 58, Weeks cannot represent residents of Downers Grove School District 58. All claims of an alleged injury to residents of Downers Grove School District 58 must be stricken since none of the plaintiffs are residents of District 58. Second, Weeks has failed to allege a distinct and palpable injury in fact, *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 261 (1977), or a purported injury that "fairly can be traced to the challenged action of the defendant," *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 73-4 (1978), or that the exercise of the Court's remedial powers would redress. *Id.*

The Illinois legislature possesses all powers to legislate in reference to public school matters. *Latham v. Board of Education*, 201 N.E.2d 111 (Ill. 1964). 105 Ill. Comp. Stat. 5/7-1 is one legislative method by which all Illinois school districts can be dissolved and their territory annexed to a neighboring school district. The Illinois General Assembly chose to create an alternative means of dissolution for residents of small Illinois school districts, through the enactment of 105 Ill. Comp. Stat. 5/7-2a(b). *Helmig III v. John F. Kennedy Comm. Consolidated School Dist. No. 129*, 610 N.E.2d 152 (Ill. App. Ct. 1993). Section 7-2a(b) provides for a petition process, and an administrative hearing conducted by the Regional Board of School Trustees of the county in which the school property is located to review the petition's validity.

Weeks' "injury" purportedly arises out of the fact that Section 7-2a(b) does not require an election to effectuate a school boundary change. Yet, the approval rate among registered voters required for a valid Section 7-2a(b) petition exceeds the approval rate required under the alternate Section 7-1 dissolution process. Specifically, Section 7-2a(b) requires that a majority of the registered voters sign a petition to dissolve a school district with a population of 5,000 or fewer residents. By contrast, were the question to be placed on a ballot at an election, the proposition would pass if a majority of the registered voters *who vote* at the election vote in favor of the proposition. 105 Ill. Comp. Stat. 5/7-7.7. Thus, unless every registered voter of Puffer-Hefty were to vote at an election at which the proposition were placed on the ballot, the passage rate required under Section 7-2a(b) is actually more stringent as to Puffer-Hefty residents than the passage rate required under Section 7-7.7. Even in the unlikely event that every eligible Puffer-Hefty voter were to vote in an

election, the required passage rate would be the same whether by election or petition. Thus, because Section 7-2a(b)'s requirement of being signed by a majority of the school district's registered voters is as stringent if not more stringent than the desired alternative, Weeks is not aggrieved by the operation of Section 7-2a(b). Accordingly, Weeks has no standing to challenge the validity of Section 7-2a(b) since he is unable to assert a distinct and palpable injury that can be traced to the actions of the Defendants and that could be redressed by this Court's remedial powers.

II.

SECTION 7-2a(b) DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

The Illinois Appellate Court properly concluded that Petitioners' equal protection challenge to Section 7-2a(b) should not be analyzed under the strict scrutiny test, but should be analyzed under the rational basis test. Applying the rational basis test, the Illinois Appellate Court correctly determined that a rational basis clearly exists for allowing the dissolution of a school district based on a majority of registered voters when the school district's population is less than 5,000 residents.

A. The Illinois Appellate Court Properly Applied The Rational Basis Test And Not The Strict Scrutiny Test In Analyzing Petitioners' Equal Protection Clause Claim

Petitioners agree that a strict scrutiny analysis is applied in an equal protection case only when a deprivation of a fundamental right or discrimination against a suspect class is alleged. Pet. p. 23. Petitioners incorrectly assert that the fundamental right to vote is implicated in this case. *Id.*

This assertion is based on Petitioners' flawed understanding of several U.S. Supreme Court decisions. This Court has not directly addressed whether a constitutionally protected right to vote on local school boundary changes exists, or whether such boundary changes may occur without an election. Yet, this Court has ruled that "States do have latitude in determining whether certain public officials shall be selected by election or chosen by appointment and whether various questions shall be submitted to the voters." *Kramer v. Union Free School District 15*, 395 U.S. 621 (1969). The decision in *Kramer* clearly suggests that this Court does not consider voting in a local school boundary change to be a constitutionally protected right. Rather, a State may devise a procedure other than submission of a referendum question to voters to accomplish school boundary changes.

While the wholesale denial of the right to vote *based on class membership* is subject to a heightened scrutiny, *Burdick v. Takushi*, 504 U.S. 428, 432-34 (1992), the legislative denial of the right to vote to all individuals with respect to a particular topic is not. In *Kramer*, this Court applied strict scrutiny to a statute that limited the right to vote in certain New York school districts to owners or lessees of taxable property, and to parents or guardians of children in public schools. The Court did not hold that all residents had a right to vote, nor did the Court hold that strict scrutiny must be applied because the right to vote was at issue. Rather, the Court held that because the State opted to put a particular matter to a vote in a school district, all similarly situated residents of the same school district had to be granted an equal voice in voting. *Kramer*, 395 U.S. at 629.

Petitioners cite to *Kramer*, and additional relevant cases, *Harper v. Va. St. Bd. of Elections*, 383 U.S. 663, (1966); *accord Evans v. Cornman*, 398 U.S. 419, 422 (1970); *McDonald v. Bd. of Election Comm'n*, 394 U.S. 802, 806 (1969), Pet. p. 24, but fail to discern their meaning. Each of these cases involved a situation where the franchise had, in fact, been granted to the electorate. "Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper*, 383 U.S. at 665. Because the franchise was granted to the electorate in those cases, limitations on the right to vote based on class membership were subject to a heightened scrutiny. Here, by contrast, the Illinois General Assembly has decided that the dissolution of small school districts may be decided through a petition process and need not be decided by an election at all. Because Section 7-2a(b) does not allow any residents the right to vote, the franchise has not been granted to the electorate and the right to vote is not implicated.

Petitioners fail to understand that Section 7-2a(b) grants the same level of franchise to all residents within each school district with 5,000 or fewer residents. Because the Illinois General Assembly determined that no resident in a school district with fewer than 5,000 residents shall have the right to vote on the school district's dissolution if Section 7-2a(b) is invoked (". . . because the questions scheduled for the election need not have been submitted to the voters" *Kramer*, 395 U.S. at 629 n.11), ". . . each resident has, as far as is possible, an equal voice in the selections" *Id.* at 629, and a strict scrutiny analysis is not warranted.

This Court has denied certiorari in at least two cases where a federal appellate court had concluded that there is no federal constitutional right to vote on municipal annexations. *Mid-County Future Alternatives Comm. v. City of Portland*, 795 P.2d 541 (Or. 1990), *cert. denied*, 498 U.S. 999 (1990) ("There is no federal constitutional right to vote on municipal annexations."); *Hussey v. City of Portland*, 64 F.3d 1260 (9th Cir. 1995), *cert. denied*, *City of Portland v. Hussey*, 516 U.S. 1112 (1996). The rationale of these decisions, coupled with this Court's analysis in *Kramer*, lead to the conclusion that there is no federal constitutional right to vote on a school boundary change. [1]

The Illinois Appellate Court found the authorities cited by the Defendants, including *Kramer*, persuasive, and concluded that Section 7-2a(b) does not infringe on the fundamental right to vote. Pet. App. A at 12a. The Illinois Appellate Court further relied upon the Illinois Supreme Court decisions of *Spaulding v. Illinois Community College Board*, 356 N.E.2d 339 (Ill. 1976); *Latham v. Bd. of Ed. of City of Chicago*, 201 N.E.2d 111 (Ill. 1964), and *People v. Deathrage*, 81 N.E.2d 581 (Ill. 1948) (no resident of a school district has an inherent right of franchise insofar as school elections are concerned; the right to vote is purely a permissive one bestowed by legislative grace in furtherance of the policy of the legislature.)

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1. The Court of Appeals of Oregon has applied the holding in *Kramer*, *Mid-County Future Alternatives Comm*, and *Hussey* to rule that there is no constitutional right to vote on local school boundary changes and that a constitutional challenge to a statute denying all residents of a particular jurisdiction the right to vote is subject to the rational basis test. *Sherwood School District 88J v. Washington County Education Service District*, 6 P.3d 518 (2000).

In *Spaulding*, plaintiffs challenged the constitutionality of a statute that allowed voters to have a referendum over whether to annex territory to an existing community college district, but that did not allow voters to have a referendum over whether to create a new community college district. As in the instant case, the plaintiffs claimed that the denial of their right to vote on the creation of a new district violated the Equal Protection Clause. The Illinois Supreme Court rejected this claim, recognizing that "the State's interest in education is so pervasive that it may constitutionally establish or alter school districts without any local referendum." *Spaulding*, 356 N.E.2d at 343. Because all voters residing in the territory formed into a new school district were denied the right to vote at a referendum, all voters were treated equally and none were deprived of a fundamental right. Accordingly, the Illinois Supreme Court applied the rational basis test to rule that the statute's classifications did not violate the Equal Protection Clause.

Petitioners further argue, without citing any legal authority, that strict scrutiny must be applied because the petition process lacks the 'secrecy' of a referendum. Pet. p. 22. Support for the Illinois Appellate Court's conclusion that a petition can substitute for an election is found in several federal cases, including *Green v. City of Tucson*, 340 F.3d 891 (9th Cir. 2003) (a petition process may serve as a substitute for an election to incorporate territory); and *Hussey v. City of Portland*, 64 F.3d 1260 (9th Cir. 1995), *cert. denied*, *City of Portland v. Hussey*, 516 U.S. 1112 (1996) (the written consents of voters required under a double majority annexation procedure were the constitutional equivalent of votes.). Furthermore, this Court has recognized that the interest in protecting a voter's privacy can be outweighed by other interests. *California Democratic Party*

v. James, 120 U.S. 2402 (2000) (alleged protection of a voter's privacy, among other interests, are not sufficiently compelling to justify the intrusion into a political party's associational rights). Finally, the right to privacy with respect to a vote only applies in those situations where the State legislature has granted such a right to vote. Because Illinois residents do not have an inherent right of franchise with respect to school matters, *Spaulding v. Illinois Community College Board*, 356 N.E.2d 339 (1976), no right of privacy attaches to legislative procedures that do not include the right to participate in an election.

As this discussion demonstrates, both federal and Illinois cases support the use by the Illinois Appellate Court of a rational basis analysis to review the constitutionality of Section 7-2a(b).

B. The Illinois Appellate Court Correctly Held That Section 7-2a(b) Survives The Rational Basis Test

Where a classification is reasonable and the statute is uniform in its operation on all members of the class to which it applies, there is no violation of the constitutional guarantee of equal protection of the law. *Latham*, 201 N.E.2d at 116. The Illinois Appellate Court clearly recognized that a system to dissolve a school district based on a majority of voter signatures when a school district's population is less than 5,000 residents is rationally related to the legitimate state goal of promoting local control of education economically and efficiently. *See*, *Committee for Educational Rights v. Edgar*, 672 N.E.2d 1178 (Ill. 1996). To support its conclusion, the Illinois Appellate Court noted that Illinois courts have consistently upheld the constitutionality of legislative classifications based on population. Pet. App. A at 14a.

The fact that most such cases involve large population classifications, as opposed to the smaller population classification at issue here, is immaterial and the analysis remains the same.

Section 7-2a(b) provides an efficient, alternative means to more quickly transfer students from an underpopulated school district with fewer educational opportunities due to its size, into one or more nearby school district(s). Petitioners admit that Illinois has a "disproportionately high number of small school districts" that could be impacted by Section 7-2a(b). Pet. p. 18. The Illinois Appellate Court reasonably determined that a school district with less than 5,000 residents is a school district with fewer children, less wealth and revenue, less economies of scale in its educational resources, fewer nonacademic amenities, and fewer extracurricular programs than a similarly situated school district with more than 5,000 residents. The small school district simply has too few students to offer the equality and scope of educational opportunities enjoyed by larger school districts. Even if it were the wealthiest school district in the state, a school district with fewer than 5,000 residents simply does not have enough students to maintain an eighth grade orchestra; an intramural boys' football team or baseball team. Thus, the alternative means of dissolution offered through Section 7-2a(b) is reasonable in light of the general policy of the Illinois State Board of Education to consolidate the State's numerous school districts.

Because the classification of school districts with fewer than 5,000 residents is clearly reasonable, and the statute is uniformly applied to all school districts with fewer than 5,000 residents, the Illinois Appellate Court's conclusion that Section 7-2a(b) does not violate the Equal Protection Clause

of the Fourteenth Amendment is correct, and review by this Court is unnecessary. The Illinois Supreme Court denied Petitioner's Petition for Writ of Certiorari and this Court should follow suit as there is no significant constitutional issue that warrants this Court's review.

III.

AN EXPEDITIOUS AND FINAL RESOLUTION OF THIS CASE IS CRITICAL TO ALLOW THE NECESSARY ENTITIES TO EFFECTUATE THE SCHOOL DISTRICT BOUNDARY CHANGES ON JULY 1, 2004

105 Ill. Comp. Stat. 5/7-9 establishes the effective date of a change in school district boundaries arising out of a Section 7-2a(b) petition. If the final decision of a review court becomes final between September 1 and June 30 of any school year, the changes in school boundaries for administrative and attendance purposes shall be effective as of the following July 1. Accordingly, should this Court issue a decision before June 30, 2004, the boundary changes shall take effect on July 1, 2004. Downers Grove School District 58, the school district to which the Puffer-Hefty territory has been annexed, is attempting to plan for a transition to occur on July 1, 2004. Puffer-Hefty has threatened to sue District 58 to prevent it from making any transitional plans until this Court has ruled. This places District 58 in the awkward position of "wait and see." The sooner this Court rules, the sooner District 58 may proceed without fear of litigation to prepare as smooth a transition as possible with respect to operational, curricular and financial issues for the children residing in Puffer-Hefty as they begin the 2004-2005 school year as District 58 students. For this reason, Respondents,

the Committee of Ten, respectfully requests that the Court expedite its consideration and disposition of the instant Petition for Writ of Certiorari.

CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition as expeditiously as possible.

Respectfully submitted,

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